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Our Ref. : 08-F-009-JK.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE CASTEL

-----X  
ST. PAUL FIRE AND MARINE INSURANCE COM-  
PANY a/s/o Mover's Inc.,

08 CIV 49757  
08 Civ.

Plaintiff,

COMPLAINT

- against -

UNITED AIR LINES, INC.,

Defendant.  
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Plaintiff, St. Paul Fire & Marine Insurance Company a/s/o Mover's Inc., by their attorneys, Badiak, & Will, LLP, as and for their Amended Complaint herein against the defendant, alleges upon information and belief as follows:

1. Plaintiff, St. Paul Fire & Marine Insurance Company (hereinafter referred to as "St. Paul"), is and was at all times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of the State of Minnesota and provided all-risk cargo insurance for the subject shipments hereinafter described, and maintained an office and place of business at 100 Baylis Road, Melville, New York, 11747.

2. Plaintiff, ST. PAUL, has paid the consignee and owner of the shipment mentioned hereinafter pursuant to the cargo insurance policy herein before described and brings this action on its own behalf and as agent and trustee on behalf of and for the interest of all parties who may be or become interested in the said shipments, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action. The shipper and consignee hereinafter mentioned have performed all conditions required on their part to be performed with respect to the subject shipment.

3. Defendant, UNITED AIR LINES, INC., (hereinafter referred to as "UNITED"), is and was a corporation organized and existing under and by virtue of the laws of one of the states of the United States with an office and place of business at JFK Airport, Building #22, Jamaica, New York 11430 and at 2850 West Golf Road, Suite 600, Rolling Meadows, IL 60008 and is and was at all times hereinafter mentioned, a common carrier by air engaged in the transportation of goods for hire.

4. All and singular the following premises are true and constitutes a claim affecting Interstate Commerce within the meaning of 28 U.S.C. §1337 and/or arising under this Court's ancillary and/or pendent jurisdiction.

5. On or before June 30, 2007, Mover's Inc., plaintiff's assured, delivered or caused to be delivered to defendant UNITED at Anchorage, Alaska, a shipment consisting of 120 packages containing Fresh Fish for carriage from Anchorage, Alaska, to St. Louis, MO, pursuant to an airway bill issued by defendant UNITED numbered 016-ANC-2783-5570, dated June 30, 2007.

6. The shipment, when delivered to defendant UNITED was in good order and condition and in all respects properly packaged for the intended transportation.

7. The airway bill, hereinbefore described, started on its face that the shipment consisted of "FRESH FISH - KEEP REFRIGERATED", required service level "1<sup>st</sup> PRIORITY" and provided a declared value for carriage of \$18,750.00.

8. Defendant UNITED delivered the shipment under the aforementioned airway bill at the airport of destination in a damaged and spoiled condition, having failed to expedite the carriage in accordance with the service level designated and having failed to property care for the shipment while in it's custody and control, in breach of it's duties as a common carrier of goods by air for hire.

9. Plaintiff St. Paul insured the subject shipment against risk of loss in transit under a policy of insurance and was obligated to and did make payment to plaintiff's assured for the loss described herein in the amount of \$18,750.00.

10. As a proximate result of defendant UNITED's breach of their contract of air carriage, plaintiff has been damaged in the amount of \$18,750.00.

11. Plaintiff's assured, the shipper, and the consignee have all performed all conditions required on their part to be performed pursuant to the terms and conditions of the aforesaid contract of air carriage, including a timely written notice of claim.

12. Accordingly, plaintiff St. Paul is entitled to bring this action as subrogee and is entitled to maintain an action against the defendant UNITED for the losses sustained to the subject shipment.

13. Plaintiff has been damaged in the amount of \$18,750.00, which amount, although duly demanded, has not been paid by defendant UNITED.

WHEREFORE, plaintiff St. Paul Fire & Marine Insurance Company demands judgment against the defendant United Air Lines, Inc., in the total amount of \$18,750.00, together with interest and the costs and disbursements of this action.

Dated: Mineola, New York  
May 28, 2008

BADIAK & WILL, LLP  
Attorneys for Plaintiff,  
ST. PAUL FIRE & MARINE INSURANCE  
COMPANY

By:  \_\_\_\_\_  
JAMES P KRAUZLIS (JK-4972)